

REMARKS

The Applicant has now had an opportunity to carefully consider the comments set forth in the Office Action that was mailed August 17, 2009 and the Advisory Action that was mailed October 26, 2009, as well as the comments of the Examiner and the Supervisory Examiner, which were provided in a series of telephone interviews that occurred on or about November 5, 2009 and on or about November 18, 2009. While all of the rejections are respectfully traversed, in the interest of compact prosecution, independent **claim 22** is being amended according to agreements reached during the interviews. Additionally, amendments which were presented in Applicant's Amendment D, which was refused entry, are being submitted again herein. Amendment, re-examination and reconsideration of the application are respectfully requested.

The Office Action

In the Office Action that was mailed August 17, 2009:

claims 1, 2, 8-10, 22 and 23 were rejected under 35 USC §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0190498 by Kallio et al. ("Kallio");

claims 3, 4, 11 and 12 were rejected under 35 USC §103(a) as being unpatentable over Kallio in view of U.S. Patent No. 7,286,521 to Jackson et al. ("Jackson");

claims 6, 7, 13, 15 and 28 were rejected under 35 USC §103(a) as being unpatentable over Kallio in view of U.S. Patent Application Publication No. 2008/0044087 by Levy et al. ("Levy");

claim 14 was rejected under 35 USC §103(a) as being unpatentable over Kallio in view of Jackson and further in view of Levy; and

claims 24-27 were rejected under 35 USC §103(a) as being unpatentable over Kallio in view of U.S. Patent Application Publication No. 2002/0115432 by Roeder ("Roeder").

In the Advisory Action

In the Advisory Action that was mailed October 26, 2009:

the previous amendment was not entered. Additionally, the Advisory Action alleged that the amendments to **claim 22** would require further search and examination.

Amendment D Was Not Entered

The Advisory Action that was mailed October 26, 2009 indicated that the previous amendment, Applicant's Amendment D, was not entered. Accordingly, the amendments and remarks originally presented in Applicant's Amendment D are being presented again here in addition to the further amendment of **claim 22**, which Supervisory Examiner Pham indicated would overcome the objections of the Advisory Action and place the application in condition for allowance.

Telephone Interview Summaries

On or about August 26, 2009, Mr. Thomas Tillander, one of the representatives of the Applicant, left a message for the Examiner, Mr. Mohammad Sajid Adhami, asking to discuss aspects of the Response to Arguments provided in the final Office Action that was mailed August 17, 2009.

On August 27, 2009, the Examiner telephone Mr. Tillander and agreed to schedule a telephone interview for September 1, 2009.

During the September 1, 2009, telephone interview, **claim 1** was discussed. In particular, Mr. Tillander distinguished the subject matter from cited paragraphs 53 and 56 of Kallio from the examination of terminating half-calls to detect identifiers recited in **claim 1**. Additionally, Mr. Tillander pointed out that the call-ID included in a "from header" and text such as +442345567@operator.com discussed in paragraphs 35 and 37 of Kallio are carried in a control layer and are not fairly construed as being applied to a half-call. Additionally, Mr. Tillander addressed the citations of the Office Action directed at claims that specifically recited --audio watermarks--. For example, **claim 28** was mentioned.

The Examiner indicated that amendment to the independent claims to indicate that the applied identifiers comprise audio watermarks would likely be entered and

allowable.

On or about September 17, 2009, Mr. Tillander contacted the Examiner to confirm that amendments such as those described above would be entered and would place the application in condition for allowance. After conferring with his supervisor, the Examiner indicated that such amendments to **claims 1** and **8** would render those independent claims allowable and suggested the cancellation of **claim 22** or that further amendments be made thereto.

On September 22, 2009, Mr. Tillander left a message for the Examiner requesting further discussion with regard to **claim 22**.

On September 24, 2009, the Examiner telephoned Mr. Tillander to discuss **claim 22**. Mr. Tillander offered to add language similar to that beginning with "such that upon..." from element b) of **claim 1** to element b) of **claim 22**. The Examiner asked if language similar to that beginning "said identifiers thereafter accompanying..." from element a) of **claim 1** would also be included in element a) of **claim 22**. Mr. Tillander agreed to consider the suggestion. No firm agreement was reached with regard to **claim 22**. However, it is believed that the amendments to **claim 22** presented herewith address the concerns of the Examiner. While the Examiner suggested changing references to call legs in **claim 22** to "half-calls" as recited in **claim 1**, the Applicant prefers to maintain the original language. In this regard, it is noted that paragraphs 19 and 20 of the published version of the application and page 5, line 30 through page 6, line 10, of the application as filed, make clear the relationship between the --call leg-- and --half-call-- terminology. Additionally, since both sets of terms have previously been searched, it is respectfully submitted that the maintenance of the --call leg-- terminology in **claim 22** does not require a new search.

On or about **November 5, 2009**, Mr. Thomas Tillander, one of the representatives of the Applicant, spoke with the Examiner, Mr. Mohammad Sajid Adhami, about comments and assertions made in the Advisory Action of October 26, 2009. **Claim 22** was discussed. Mr. Tillander submitted that a search had previously been made by the Office prior to the most recent amendments and suggested that that search would have encompassed the subject matter recited in **claim 22** in its present form. The Examiner disagreed and suggested including recitation from the preamble of

claim 1 into the preamble of **claim 22**. Mr. Tillander agreed to consider the suggestion.

On **November 6, 2009**, Mr. Tillander transmitted by facsimile two proposed amended versions of **claim 22** and asked whether the Examiner believed that one or both of the proposed amendments would place the application in condition for allowance.

Having received no reply from the Examiner, Mr. Tillander called the Examiner on **November 17, 2009**, and was informed by a voicemail greeting that the Examiner would be unavailable until November 23, 2009. Since the shortened statutory period for reply would expire on November 17, 2009, Mr. Tillander called Supervisory Examiner Chi H. Pham. However, Mr. Tillander was only able to leave a voicemail message.

On **November 18, 2009**, Supervisory Examiner Pham called Mr. Tillander. **Claim 22** and the proposed amendments thereto were discussed. Supervisory Examiner Pham indicated that he was unable to find a copy of the November 6, 2009 fax but agreed to review the proposal if a copy of the proposal were sent to his attention. Accordingly, a copy of the proposed claim amendments was transmitted to Supervisory Examiner Pham. Later that day, Supervisory Examiner Pham telephoned Mr. Tillander and indicated that either version of **claim 22** would place the application in condition for allowance. However, Supervisory Examiner Pham indicated that since the shortened statutory period had now tolled, it would be necessary for the Applicant to petition for an extension of time and to pay the associated fee. Mr. Tillander asked if that could be avoided if the claim amendment were entered by Examiner's amendment. Supervisory Examiner Pham indicated that it could not be avoided and apologized for the delay.

Accordingly, Applicant is submitting the present amendment, which places **claim 22** in a form that Supervisory Examiner Pham indicated would be allowable.

For the foregoing reasons, it is respectfully submitted that independent **claim 22**, as well as independent **claims 1** and **8**, are allowable.

The Claims Are Not Anticipated

Claims 1, 2, 8-10, 22 and **23** were rejected under 35 USC §102(e) as being anticipated by Kallio.

However, for reasons similar to those presented in Applicant's Amendment C, these rejections are respectfully traversed. The call-ID information described in Kallio referenced by the Office Action is not applied to a half-call. Instead, this information is carried in control messages separate from the call legs which begin and end at user equipment.

Furthermore, independent **claims 1, 8 and 22** have been amended to indicate that the applied identifiers comprise audio watermarks. As outlined in the Telephone Interview Summaries above, the Examiner has agreed that Kallio does not disclose or suggest applying audio water marks to first and second call legs or originating and terminating half-calls.

It is believed that the amendments to **claim 22** presented herewith address the concerns of the Examiner and that **claim 22** is allowable for the same reasons as **claims 1 and 8**. While the Examiner suggested changing reference to call legs in **claim 22** to "half-calls" as recited in **claim 1**, the Applicant prefers to maintain the original claim language. In this regard, it is noted that paragraphs 19 and 20 of the published version of the application and page 5, line 30, through page 6, line 10, of the application as filed, make clear the relationship between the call leg and half-call terminology. Additionally, since both sets of terms have previously been searched, it is respectfully submitted that the maintenance of the --call leg-- terminology in **claim 22** does not require a new search.

Additionally, the preamble of claim 22 has been further amended as suggested by the Examiner. The Supervisory Examiner has indicated that the amendments to the preamble overcome the objections raised in the Advisory Action and places **claim 22**, and therefore the application as a whole, in condition for allowance.

For at least the foregoing reasons, **claims 1, 2, 8-10, 22 and 23** are not anticipated by Kallio.

The Claims Are Not Obvious

Claims 3, 4, 11 and 12 were rejected under 35 USC §103(a) in view of Kallio and Jackson.

This rejection is respectfully traversed for the reasons presented in Applicant's

Amendment C. The cited portion of Jackson, even in combination with Kallio **does not disclose or suggest** the recognition of associated pairs of half-calls and their interconnection as recited in **claims 3 and 4**, or means therefor as recited in **claims 11 and 12**. Additionally, **the Office has not met its burden** of presenting a prima facie case of obviousness. Kallio **does not suggest** an inefficient use of network resources. Accordingly, there is no motivation to include some technique from Jackson into the system of Kallio in order to use network resources more efficiently, as asserted by the Office Action. **Moreover**, since Jackson does not disclose the routing or release of routing paths or circuit switched portions of routing paths, combining Kallio with Jackson would not arrive at the subject matter of **claims 3, 4, 11 and 12**.

Additionally, **claims 3 and 4** dependent indirectly from **claim 1, claims 11 and 12** depend indirectly from **claim 8**. The Examiner has agreed that **claims 1 and 8** are allowable.

Claims 6, 7, 13, 15 and 28 were rejected under 35 USC §103(a) as being unpatentable over Kallio in view of Levy.

In this regard, the Office Action stipulates that Kallio does not disclose superimposing audio watermarks on traffic, where the audio watermarks are substantially unperceivable by the end users. In this regard, the Office Action relies on paragraph 55 of Levy and asserts that Levy discloses superimposing audio watermarks on traffic, where the audio watermarks are substantially unperceivable by the end user.

However, Levy relates to "**digital** watermarking" (paragraph 2). While paragraph 55 uses the phrase --audio watermarks transitional ID--, it is respectfully submitted that this is a reference to a digital watermark associated with audio content (first sentence of paragraph 55; first sentence of paragraph 51; paragraph 51, line 7; paragraph 52; paragraph 54, lines 1-8). Accordingly, it is respectfully submitted that **Levy does not disclose or suggest** superimposing audio watermarks on traffic being delivered via the originating half-calls, as recited in **claim 6** or wherein the audio watermarks are substantially unperceivable by end users employing the consumer premises equipment, as recited, for example, in **claim 7**. As indicated in the portions of Levy cited by the Applicants above, Levy uses the phrase --audio watermark-- to distinguish between a digital watermark applied to an audio channel and a digital watermark applied to video

content.

For at least the foregoing reasons, **claims 6, 7, 13, 15 and 28** are not anticipated and are not obvious in light of Kallio and Levy.

Furthermore, the Office has not met its burden of presenting a *prima facie* case of obviousness. Kallio does not express any need to track users. Accordingly, there is no motivation in the art to combine subject matter from Levy with subject matter for Kallio in order to identify a user for tracking as suggested by the Office Action. The only motivation for combining subject matter from Levy with subject matter from Kallio is information gleaned only from the present application. Accordingly, the rejection of **claims 6, 7, 13, 15 and 28** is based on **impermissible hindsight** reasoning, and again, **claims 6, 7, 13, 15 and 28** are not anticipated and are not obvious in light of Kallio and Levy. Additionally, **claims 6 and 7** depend from allowable **claim 1**, **claims 13 and 15** depend from allowable **claim 8** and **claim 28** has been canceled. For at least the foregoing reasons, **claims 6, 7, 13 and 15** are not anticipated and are not obvious.

Claim 14 was rejected under 35 USC §103(a) as being unpatentable over Kallio in view of Jackson and Levy.

However, for the reasons submitted in Applicant's Amendment C, this rejection is respectfully traversed. While Levy uses the phrase --audio watermark--, Levy uses it to refer to a digital watermark applied to audio content to distinguish it from a digital watermark applied to video content and **does not disclose or suggest** superimposing an audio signal on traffic being delivered via an originating half-call or means for superimposing same as recited in **claim 14**. Additionally, as indicated in Amendment C, the Office has not met its burden of presenting a *prima facie* case of obviousness.

Furthermore, **claim 14** has been amended to depend from **claim 8** and, as indicated above, the Examiner has agreed that **claim 8** in its present form is allowable.

For at least the foregoing reasons, **claim 14** is not anticipated and is not obvious in light of Kallio, Jackson and Levy.

Additionally, the Office has not met its burden of presenting a *prima facie* case of obviousness for the same reasons submitted above with regard to **claims 6, 7, 13, 15 and 28**.

For at least the foregoing additional reasons, **claim 14** is not anticipated and is

not obvious in light of even three references including Kallio, Jackson and Levy.

Claims 24-27 were rejected under 35 USC §103(a) as being unpatentable over Kallio in view of Roeder.

However, for the reasons presented in Applicant's Amendment C, these rejections are respectfully traversed. Furthermore, **claims 24-27** depend indirectly from **claim 22** and, as indicated above, it is submitted that **claim 22** is allowable.

For at least the foregoing reasons, **claims 24-27** are not anticipated and are not obvious in light of Kallio and Roeder.

Telephone Interview

In the interests of advancing this application to issue the Examiner is invited to telephone the undersigned to discuss the foregoing or any suggestions that the Examiner may have to place the case in condition for allowance.

CONCLUSION

Claims 1-4, 6-15 and 22-27 remain in the application. **Claim 28** has been canceled. **Claims 1, 6, 13-15 and 22** have been amended. The amendments do not require a new search. For at least the foregoing reasons, the application is in condition for allowance. Accordingly, an early indication thereof is respectfully requested.

☒ Remaining Claims, as delineated below:

(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT LESS HIGHEST NUMBER PREVIOUSLY PAID FOR		(3) NUMBER EXTRA
TOTAL CLAIMS	20	- 21 =	0
INDEPENDENT CLAIMS	3	- 3 =	0

☒ Applicant hereby petitions the Commissioner under 37 C.F.R. § 1.136(a) and requests a one (1)- month extension of time to respond to the outstanding Office Action.

☒ This is an authorization under 37 CFR 1.136(a)(3) to treat any concurrent or future reply, requiring a petition for extension of time, as incorporating a petition for the appropriate extension of time.


☒ The Commissioner is hereby authorized to charge any filing or prosecution fees which may be required, under 37 CFR 1.16, 1.17, and 1.21 (but not 1.18), or to credit any overpayment, to Deposit Account Number 06-0308.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to telephone Thomas Tillander, at 216.363.9000.

Respectfully submitted,

Fay Sharpe LLP

December 17, 2009
Date


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